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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/848,829	05/19/2004	Thomas John Nyland	14684.1US01	4775
7590 04/04/2006			EXAMINER	
Merchant & Gould P.C. P.O. Box 2903 Minneapolis, MN 55402-0903			ROWAN, KURT C	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/848,829

Applicant(s)

NYLAND, THOMAS JOHN

Examiner

Kurt Rowan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 16-30 and 32-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 16-30 and 32-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4-13-2005</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 33 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 33 recites the limitation "the one piece member" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 10-11, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Roberts.

The patent to Roberts shows a stabilizer for a fishing rod and reel in Fig. 2. Roberts shows a clamp 17, 18, an arm cradle 2, 3 that opens upwardly (since arms 16, 16 will pivot upwardly due the adjustment of bolt 12) and being positioned above the top side of the clamp. Roberts shows a receptacle between arms 17, 18 extending through the clamp from the front side to the back side. Roberts shows a pivot pin 9 connecting the

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arm cradle to the coupler (taken to be the clamp). Roberts shows the pivot pin having a pivot shaft that extends downwardly from the arm cradle to the coupler. The pivot pin is free to pivot about a pivot axis that is offset to the left as shown in Fig. 2. the pivot pin is connected to the arm cradle at a location adjacent the front end of the arm cradle as shown in Fig. 3 noting that no frame of reference is given. The length of the forearm receiving member extending radially outwardly from the pivot axis since the length can be interpreted as the distance along the curve of the arm in the plane of the paper.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8, and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry in view of Paddock for substantially the same reasons stated in the first Office Action.

The patents to Perry and Paddock show fishing rod attachments. Perry shows a fishing rod with a top side, bottom side, a left side and a right side. Perry shows an arm cradle 52, 54 connected to the fishing rod 42. The cradle opens in an upward and is pivotally movable relative to the fishing rod about a pivot axis that is offset to one side of the fishing rod as shown in Fig. 2. The patent to Paddock shows a fishing 18 rod having a plurality of eyelets 26 as disclosed in Fig.1 and in column 5, lines 3-4. The patent to Perry shows all of the elements recited with the exception of the eyelets positioned on

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the rod. Perry probably has eyelets but at any rate, it would have been obvious to provide Perry with eyelets as shown by Paddock for the purpose of guiding the fishing line. In reference to claim 2, Perry shows the cradle positioned on the top of the fishing rod. In reference to claim 3, Perry appears to show the cradle 54 inclined upwardly at about a 45 degree angle. It appears that Perry would be inclined from 0 degrees to 90 degrees. In reference to claim 4, Perry shows the incline angle being adjustable. In reference to claim 5, Paddock shows a fishing rod with a shaft and a handle wherein the fishing rod includes a reel mount at the handle and the arm cradle is connected to the handle behind the reel mount as shown in Fig. 1. In reference to claim 7, Perry shows the arm cradle having a front end and a back end and the arm cradle is elongated from the front end to the back end.

5. Claims 1-2, 4, 7, 8, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts in view of Paddock.

The patents to Roberts and Paddock show fishing rods having arm cradles as discussed above. Roberts shows all of the elements recited in claim 1 with the exception of the fishing rod having eyelets although the rod probably has eyelets. At any rate Paddock shows a rod having eyelets 26. In reference to claim 1, it would have been obvious provide Roberts with eyelets as shown by Paddock to guide the fishing line. In reference to claim 2, Roberts shows the rod cradle positioned above the fishing rod. In reference to claim 4, Roberts shows an incline angle between the cradle and the fishing rod which is adjustable due to rotation of elements 11-15. In reference to claim

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7, Roberts shows a cradle 2-3 having a front end 8 and a back end and that the cradle is elongated from the front end to the back end. In reference to claim 8, Roberts shows a pivot pin 9 coupled to the front end 8 of the arm cradle 2-3. In reference to claim 9, Roberts shows a clamp 1 coupled to the fishing rod with the clamp defining an opening in which the pivot shaft 9 is pivotally mounted.

6. Claims 12, 16-22, 32, 33, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roberts.

The patent to Roberts shows a support for a fishing rod as discussed above. In reference to claim 12, Roberts does not disclose that the arm cradle extends upwardly at an angle of between 15-35 degrees relative to the central axis of the receptacle of the coupler, but it would have been obvious to employ an angle in the range of 15-35 degrees to suit the comfort of a user. See *In re Aller et al.*, 105 USPQ 237. In reference to claims 16, 18, 19, Roberts shows all of the elements recited with the exception of that it is not clear if the width of the channel is less than the length of the channel of the arm cradle. At any rate, it would have been obvious to employ a cradle defining a channel which has a width being shorter than the length of the channel since the size relationships would be determined through routine experimentation. Further it would have been obvious to size the length of the channel 1.5 or 2 times larger than the width of the channel. See *In re Rose*, 105 USPQ 137. In reference to claim 17, Roberts shows the base portion 3 extending from an open front portion to the open back end.

7. Claims 23-26 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry in view of Roberts.

The patents to Perry and Roberts show an arm support for a fishing rod as discussed above. In reference to claim 23, Perry shows an arm cradle 52 in Fig. 1 and a pivot pin 96 at hinge connection 90. The patent to Roberts shows a pivot pin 9 oriented in a vertical direction. Perry shows the pivot pin oriented from side to side not top to bottom, but it would have been obvious to change the orientation of the pivot pin to vertical orientation as shown by Roberts so that the upper portion would be connected to the arm cradle and the lower portion received within the pivot pin opening of the handle coupler 100 noting that merely rearranging the location of parts is contemplated. Further it would have been obvious to employ the connection at the front end of the base portion since the function is the same and no stated problem is solved. See *In re Japikse*, 86 USPQ 70. In reference to claim 35, it would have been obvious to change the orientation of the pivot pin so that the upper end portion is aligned at an obtuse angle with respect to the lower end portion of the pivot pin since the function is the same and no stated problem is solved.

Response to Arguments

8. Applicant's arguments filed January 23, 2006 have been fully considered but they are not persuasive. Applicant's response overcomes the rejection under 35 USC 112, second paragraph. In reference to claim 10, the position of the clamp of Roberts would depend on the size and preference to the user to suit varying fishing conditions. Fig. 2 shows the clamp 3 extending downwardly and inwardly. Applicant argues that Roberts does not show that the pivot axis extends in an upward/downward direction and is located adjacent the front end of the forearm receiving member. However, the term

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"adjacent" is a broad relative term and no frame of reference is given. The pivot axis extends almost directly through the end of the arm coupler or the forearm receiving member and therefore a longitudinal axis of the arm clamp 3 taken near the end of clamp (near where the reference numerals 16, 16 are shown in Fig. 2) would intersect the vertical pivot axis of the pivot pin. In reference to claims 1 and 27, Perry discloses an arm support that can pivot or rotate left or right relative to the fishing rod since fixture 100 can rotate on the fishing rod handle. Perry does not state that the stabilizer tab 120 prevents rotation of the rod with respect to the arm cradle. See column 4, lines 28-33. The arm cradle of Paddock can rotate respect to the fishing rod by loosening of clamp 36 so that the rod 14 can turn inside the clamp. In response to applicant's argument that there is no suggestion to combine the references Roberts and Paddock, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art since merely the eyelets 26 on the fishing rod shown by Paddock are being provided to Roberts. Hence the manner in which the two arm cradles operate is not material to the combination. As to claims 16-22, Roberts contemplates an upwardly facing channel and applicant even shows this embodiment on page 14 of the remarks in the response. The relative dimensions would be

determined through routine experimentation noting changes in size are obvious. Applicant has not shown how changes in relative sizes would significantly affect the functionality of the device. Also, see *In re Rose*, 105 USPQ 137 as cited above.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Kurt Rowan", with a long, sweeping horizontal stroke at the end.

Kurt Rowan
Primary Examiner
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KR